

Hon. Ronald B. Leighton

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Andy Tage Pedersen and Bjarne Otto
Pedersen,

Plaintiffs,

vs.

Pierce County; Risk Management, Pierce
County Sheriff's Department; Washington
State Patrol, et al.,

Defendants.

NO. C03-5456 RBL

[PROPOSED]
ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

The motion of Defendants Pierce County, Pierce County Sheriff's Department, David Plummer, Lisa Plummer, Thomas Davis, "Jane Doe" Davis, Ross Herberholz, and "Jane Doe" Herberholz, hereinafter referred to as "Pierce County Defendants," for dismissal of Plaintiffs' action against them pursuant to Civil Rule 56 came on regularly before the Court on Friday, October 14, 2005.

In ruling upon Pierce County Defendants' motion for summary judgment, the Court has considered the following:

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1 1. Motion for and Memorandum in Support of Defendants' Motion for Summary
2 Judgment with Declarations of Thomas Davis, Michael Dumas, David Plummer, David
3 Tenney, David Tenney.

4 2. Plaintiffs' Response to Motion for Summary Judgment with Exhibits A through
5 LL.

6 3. Defendants' Reply to Plaintiffs' Response to Motion for Summary Judgment
7 with Exhibit 1 and Attachments from Pierce County District Court Nos. 00-1-00497-6 and 00-
8 1-01496-3.

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10 The Court has considered all materials submitted in support of and in opposition to the
11 motion for summary judgment, and makes the following orders:

12 1. It is ORDERED that this matter be BIFURCATED. The Court will first
13 consider only those claims directly related to the incident dated August 22, 2001, and any
14 alleged harassment that occurred thereafter. These matters will be heard first in the first phase
15 of this trial. Should a second phase be warranted after resolution of the first phase, then the
16 Plaintiffs' claims against Pierce County for an alleged policy or custom to violate their
17 constitutional rights and all claims related thereto shall be considered.

18 2. It is ORDERED that Defendants' motion to dismiss Plaintiffs' claims for lack
19 of jurisdiction due to improper service is DENIED, as having been waived by not raising the
20 issue during previous opportunities.

21 3. It is ORDERED that Defendants' motion to dismiss Plaintiffs' claims against
22 the Pierce County Sheriff's Department and the Pierce County Risk Management is
23 GRANTED. These two entities are not separate legal entities for purposes of this Court and
24 this action, and the Plaintiffs' claims against Pierce County are adequate.
25

1 4. It is ORDERED that Defendants' motion to dismiss Plaintiffs' claims against
2 "John Doe" and "Jane Doe" is hereby GRANTED. Plaintiffs have had ample opportunity to
3 identify any parties they wish to name in this case. The Court will not allow any further
4 addition of parties.

5 5. It is ORDERED that the Defendants' motion to dismiss the Plaintiffs' claims
6 alleging misappropriation of taxpayer funds and equipment is hereby GRANTED. The
7 Plaintiffs lack standing to bring this claim.

8 6. It is ORDERED that the Defendants' motion to dismiss the Plaintiffs' claims
9 against individual deputies is hereby DENIED. The Court rules that qualified immunity does
10 not shield the deputies from the claims stated herein due to the factual dispute between the
11 Plaintiffs and Defendants.

12 7. It is ORDERED that the Defendants' motion for summary judgment on the
13 claims of false arrest and imprisonment by Andy Pedersen are hereby granted. Mr. Pedersen
14 was convicted in Pierce County District Court, and therefore, his claims of false arrest and
15 imprisonment do not lie.

16 8. It is ORDERED that the Defendants' motion to dismiss Plaintiff Bjarne
17 Pedersen's claims of false arrest and imprisonment are hereby denied.

18 9. It is ORDERED that the Defendants' motion to dismiss Plaintiff Andy
19 Pedersen's claim of malicious prosecution is hereby GRANTED. As was stated above in item
20 7, the conviction of Andy Pedersen renders that claim not sustainable.

21 10. It is ORDERED that the Defendants' motion to dismiss Plaintiff Bjarne
22 Pedersen's claim of malicious prosecution is hereby DENIED.

12. It is ORDERED that the Defendants' motion to dismiss the Plaintiffs' claims of perjury/false swearing and attempted murder and non-feasance are hereby GRANTED. Plaintiffs do not have standing to bring these claims.

14. It is ORDERED that the Defendants' motion to dismiss Plaintiff Andy Pedersen's claim of unlawful seizure is hereby GRANTED. As was noted above, Andy Pedersen was convicted in the Pierce County District Court, and therefore, this claim is foreclosed.

Ronald B. Lightner

Presented by:

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